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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ADAM STAPLES,

Defendant and Appellant.

B208918

(Los Angeles County
Super. Ct. Nos. BA334568,
YA068555)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Stephen A. Marcus, Judge. Affirmed as modified.

Lea Rappaport Geller, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr. and Sarah J. Farhat, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Adam Staples appeals from a judgment entered after a jury found him guilty of possession of a shank in a custodial facility in violation of Penal Code section 4502, subdivision (a).¹ He contends, and the People concede, that the trial court erred in sentencing him to two full consecutive terms of imprisonment. We agree and modify the judgment.

FACTS AND PROCEDURAL HISTORY

On June 19, 2007, at 6:30 a.m., defendant and another person entered a home and woke the three residents, including Patrick Brown (Brown). Defendant demanded property and waved a knife in a threatening manner. Defendant stabbed Brown once in the torso above his left ribcage.

On April 10, 2008, defendant pled no contest in connection with the stabbing incident to a charge of assault with a deadly weapon (§ 245, subd. (a)(1)) in case No. YA068555 (YA case). While defendant was in custody on the YA case and prior to his plea, Los Angeles County Deputy Sheriff Jeffrey Hohman conducted a routine search of defendant's cell on December 18, 2007. He discovered a piece of plastic six and one-half inches in length and narrowed at one end, hidden between the mattresses of defendant's bunk. Defendant waived his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 and stated that the item was a "shank" that he had been given for his own protection by a "homey who is going to State."

On April 22, 2008, in connection with the shank incident, the jury found defendant guilty of custodial possession of a weapon (§ 4502, subd. (a)) in case No. BA334568 (BA case). On May 19, 2008, the trial court sentenced defendant in the BA case to the middle term of three years in state prison, consecutive to any other sentence.

On May 23, 2008, a different trial court sentenced defendant in the YA case to the middle term of three years in state prison, concurrent to the sentence imposed in the BA

¹ All subsequent references are to the Penal Code.

case. On June 16, 2008, the initial trial court resentenced defendant in the BA case pursuant to section 1170, subdivision (d) to the same sentence imposed on May 19, 2008, that is, to a consecutive three-year term in state prison.

DISCUSSION

The trial court erred by sentencing defendant to two full term sentences

Defendant contends that the trial court erred by sentencing him consecutively to two full term sentences. Rather, defendant urges, the trial court should have sentenced him to a full principal term and a consecutive one-third subordinate term pursuant to section 1170.1, subdivision (a). The People concede the point.

Pursuant to section 1170.1, subdivision (a), when consecutive terms of imprisonment are imposed, the aggregate term for all convictions “shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements” The principal term is the greatest term of imprisonment that can be imposed for any of the crimes. (§ 1170.1, subd. (a).) “The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed” (*Ibid.*) The sentencing rules apply to consecutive sentences regardless of whether the sentences were imposed in the same proceeding or court, or in different ones. (*Ibid.*)

Section 4502, subdivision (a) provides in part that: “Every person who, while at or confined in any penal institution, . . . possesses or carries upon his or her person or has under his or her custody or control . . . any dirk or dagger or sharp instrument, . . . is guilty of a felony and shall be punished by imprisonment in the state prison for two, three, or four years, to be served consecutively.”

Here, defendant was sentenced to the middle term of three years in state prison for possession of a shank in the BA case. Four days later, a different trial court sentenced defendant to the middle term of three years in state prison in the YA case, *concurrent* to the sentence imposed in the BA case. Three weeks later, the initial trial court in the BA case resentenced defendant to the sentence previously imposed: a *consecutive three-year* term in state prison.

Pursuant to section 1170.1, subdivision (a), a three-year middle term should have been selected as the principal term. A subordinate term of one-third of the middle term should then have been selected to run consecutively to the principal term. As the People concede, nothing in section 4502 precludes defendant's sentence for his offense from the consecutive sentencing scheme set forth in section 1170.1, subdivision (a). And, while section 4502 requires *consecutive* sentencing, it does not mandate *full consecutive* sentences. (*People v. Mosley* (2007) 155 Cal.App.4th 313, 328.)

The sentence shall be modified in accordance with this opinion.

DISPOSITION

The judgment is modified to reflect the sentence for custodial possession of a weapon in case No. BA334568 to be one year (one-third the middle term of three years) consecutive to the principal three-year term for assault in case No. YA068555. The trial court is ordered to forward the corrected abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST